

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16621 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

BHANUBHAI JAYRAMBHAI MALI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16621 of 2003
MR HR PRAJAPATI for Petitioner No. 1
MR MR PRAJAPATI for Petitioner No. 1
Ms Mita Panchal, AGP for Respondent No. 1-3
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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 22/04/2004

ORAL JUDGEMENT

The petitioner above named has preferred this
petition under Article 226 of the Constitution of India

for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 19.11.03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that one prohibition offence was registered against him before Western Division Prohibition Police Station at C.R.No.1824 of 2003 on 15.11.2003 for an offence punishable u/s.66, 65, 81 and 116 of the Bombay Prohibition Act, 1949.

3. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities. On the strength of the aforesaid one registered offence and two statements of unnamed witnesses, the detaining authority found that the petitioner is required to be detained, with a view to prevent him from indulging in bootlegging activities which amounted to a threat to public order and accordingly, the order of detention was passed against the petitioner.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that one offence was registered, it could not be said that there was a threat to public order. It has also been contended that names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. The learned AGP produces affidavit, which is taken on record. I have heard the learned advocates for the parties and have perused the papers.

6. It is not much in dispute that the petitioner was detained in exercise of the powers u/s.3(2) of the said Act on the ground that the petitioner was a "bootlegger" and his activities amounted to a threat to public order. The learned advocate for the petitioner has contended that one offence under the Bombay Prohibition Act, 1949, was registered against the petitioner. That solitary stray offences registered against the petitioner could not lead to an inference that the petitioner was a

"bootlegger" and that his alleged bootlegging activities raised a threat to public order.

7. The detaining authority has also considered statements of two witnesses whose names have not been disclosed. The learned advocate for the petitioner has argued that the names of the witnesses were required to be disclosed and when the names were not disclosed, the petitioner was unaware about those names and hence, the petitioner could not submit an effective representation to the detaining authority or to the State Government.

8. The learned AGP contends that u/s.9(2) of the said Act, the detaining authority has a power of privilege to withhold the names of the witnesses from the notice of the petitioner. There is no dispute about the same. At the same time, it is required to be considered that such a representation is required to be considered on appropriate material. Before a right or power of privilege is claimed u/s.9(2) of the said Act, the detaining authority has to ascertain by appropriate inquiry that there is a genuine fear or apprehension in the minds of the witnesses on account of which they apprehend fear and therefore, their names were required to be kept away from the notice of the petitioner. In the present case, we find that the records do not show that there was credible material before the detaining authority in order to withhold the names of the witnesses from the notice of the petitioner. In absence of such material on record, it cannot be said that the detaining authority was justified in withholding the names of those witnesses.

9. It has also been contended that the detaining authority has observed that the petitioner was in custody that he would apply for bail and he would get himself bailed out and he would continue his activities as bootlegger. It has also been contended that there was no reason for the detaining authority to observe as aforesaid. In support of the said argument, learned Advocate for the petitioner has relied upon a decision of the Apex Court in the case of *Amritlal v. Union Government*, reported in 2000 SC 3675. The relevant portion can be gathered from paras 6 and 7 of the said judgment which are reproduced for ready reference:

"6. The requirement as noticed above in *Binod Singh's case* (AIR 1986 SC 2090 1986 Cri.L.J. 1959) that there is likelihood of the petitioners being released on bail that however is not available in the reasonings as provided by the

concerned officer. The reasoning available to the 'likelihood of his moving an application for bail' which is different from 'likelihood to be released on bail'. This reasoning, in our view is not sufficient compliance with the requirements as laid down.

7. The emphasis however, in Binod Singh's case (supra) that before passing the detention order the concerned authority must satisfy himself of the likelihood of the petitioner being released on bail and that satisfaction ought to be reached on cogent material. Available cogent material is the likelihood of having a bail application moved in the matter but not obtaining bail order."

On the strength of the above observation of the Supreme Court, it is clear that in the present case also the petitioner was in detention and the detaining authority had no material before it in order to observe that the petitioner would apply for bail and he would get himself bailed out and, therefore, the detention order was required to be passed. Therefore, the above observation cannot be made in the grounds of detention order passed by the detaining authority without any ground or material on record. In that view of the matter, the detention order cannot be upheld in terms of the aforesaid decision of the Supreme Court. Therefore, the order of detention is required to be held to be illegal and consequently it

10. For the foregoing reason, this petition is allowed. The impugned order of detention dated 19.11.03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

[D P Buch, J.]

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